

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

ITR No.32 of 1991

Date of decision:7.11.2006

The Commissioner of Income tax (Central) Ludhiana

....Petitioner

versus

M/s. Hind Woollen & Hosiery Mills (P) Limited, Ludhiana

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. SK Garg Narwana, Advocate, for the revenue.

JUDGMENT:

Following question has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, (for short, 'the Tribunal') arising out of its order dated 28.8.1989 in ITA No.1968 of 1985, for the assessment year 1982-83:-

“Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the cash assistance of Rs.5,12,407/- received by the assessee was not in the nature of trading/revenue receipt and thus not assessable as assessee's income for the assessment year 1982-83:-

The assessee is a private limited company engaged in manufacture and sale of hosiery goods. It received cash assistance of Rs.5,12,407/-, which was treated as its income. The CIT(A) upheld the view taken by the Assessing Officer. The Tribunal set aside the said view following earlier judgments of the Tribunal.

We have heard learned counsel for the revenue and perused the findings recorded.

The amount in question was received by the assessee on export of brass art-wares and carpets as cash compensatory support, as mentioned

in para 13 of the order of the CIT(A).

We find that vide Finance Act, 1990, Clause (iiib) has been added to section 28 retrospectively w.e.f 1.4.1967, whereby the amount has to be treated as income from profits and gains of business and profession.

The amendment has been upheld in **Aero Leather P.Limited v. UOI and others**, (1992) 194 ITR 7 (Delhi) wherein, it was observed that the word “income” ought to be given its ordinary, natural and grammatical meaning, as held by the Hon'ble Supreme Court in **Navnit Lal C.Javeri v. KK Sen**, (1965) 56 ITR 198 and **Navinchandra Mafatlal V. CIT**, (1954) 26 ITR 758. It was further held that power of retrospective legislation having been upheld by the Hon'ble Supreme Court in **Ujagar Prints v. Union of India**, (1989) 179 ITR 317 and **Lohia Machines Limited v. Union of India**, (1985) 152 IOTR 308, the said judgments were fully applicable in support of validity of the said provision.

In **CIT v. P.J.Chemicals Limited**, (1994) 210 ITR 830, the Hon'ble Supreme Court held that capital subsidy was not deductible from the cost of capital asset. The said judgment was held to be applicable to cash incentive covered by Section 28(iiib) of the Act in judgment of the Rajasthan High Court in **CIT v. Radha Madhav Gum Factory**, (1996) 217 ITR 355, which was followed in **CIT v. Rajasthan Udyog**, (1997) 225 ITR 468 (Raj.), **CIT v. Emery Stone Manufacturing Co.**, (1997) 225 ITR 480 (Raj.), **CIT v. Smt.Maya J.Daryani**, (1998) 231 ITR 554 (Del), **Gedore Tools Pvt. Limited v. CIT**, (1999) 238 ITR 268 and **CIT v. RD Ramnath and Co.** (1999) 235 ITR 31(Del). Accordingly, there is no escape from the conclusion that cash assistance for export has to be treated as income.

In view of the above, the question referred has to be answered in favour of the revenue and against the assessee.

The reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

November 7, 2006
'gs'

(Rajesh Bindal)
Judge

